

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4519 OF 2005

Shri Shankar Vithal Kawade & Ors. : Petitioners
(Orig. Defendants)

V/s.

Shri Madhukar Narhar Badave & Ors. : Respondents
(Orig. Plaintiffs)

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Mr.R.V.More for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

July 15, 2005.

P.C.:

1. The petitioners have challenged the order of the appellate Court. The appellate Court has refused to appoint a Commissioner as sought by the petitioners. The reason for refusing to appoint the Commissioner appears to be that the respondents have claimed exclusive title in respect of the disputed wall and the petitioners have claimed that the disputed wall is a common wall. Thus, the dispute is restricted to the extent of the disputed wall. There is no dispute between the parties in respect of the boundaries. It is not a good enough reason for

rejecting the appointment of the Commissioner. Moreover, there is no infirmity, jurisdictional or otherwise which warrants interference by this Court under Article 227 of the Constitution of India.

2. The petition is dismissed.

S.A. BOBDE, J.